

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 14th day of July, two thousand eight.

PRESENT:

HON. RALPH K. WINTER,
HON. CHESTER J. STRAUB,
HON. DEBRA ANN LIVINGSTON,
Circuit Judges.

HANG CHEN,
Petitioner,

v.

BOARD OF IMMIGRATION APPEALS, U.S.
DEPARTMENT OF JUSTICE,
Respondents.

08-0146-ag
NAC

1 **FOR PETITIONER:** Henry Zhang, New York, New York.

2
3 **FOR RESPONDENTS:** Gregory G. Katsas, Acting Assistant
4 Attorney General, Civil Division;
5 Cindy S. Ferrier, Senior Litigation
6 Counsel; P. Michael Truman, Trial
7 Attorney, Office of Immigration
8 Litigation, Civil Division, U.S.
9 Department of Justice, Washington,
10 D.C.

11
12 UPON DUE CONSIDERATION of this petition for review of a
13 Board of Immigration Appeals ("BIA") decision, it is hereby
14 ORDERED, ADJUDGED, AND DECREED that the petition for review
15 is DENIED.

16 Petitioner Hang Chen, a native and citizen of the
17 People's Republic of China, seeks review of a December 12,
18 2007 order of the BIA affirming the December 6, 2006
19 decision of Immigration Judge ("IJ") Douglas B. Schoppert
20 denying his application for asylum, withholding of removal,
21 and relief under the Convention Against Torture ("CAT"). In
22 re Hang Chen, No. A 97 513 054 (B.I.A. Dec. 12, 2007), aff'g
23 No. A 97 513 054 (Immig. Ct. N.Y. City, Dec. 6, 2006). We
24 assume the parties' familiarity with the underlying facts
25 and procedural history in this case.

26 When the BIA issues an opinion that fully adopts the
27 IJ's decision, this Court reviews the IJ's decision. See,
28 e.g., Chun Gao v. Gonzales, 424 F.3d 122, 124 (2d Cir.

1 2005). We review the agency's factual findings, including
2 adverse credibility findings, under the substantial evidence
3 standard, treating them as "conclusive unless any reasonable
4 adjudicator would be compelled to conclude to the contrary."
5 8 U.S.C. § 1252(b)(4)(B); see, e.g., Shu Wen Sun v. BIA, 510
6 F.3d 377, 379 (2d Cir. 2007) (per curiam).¹ However, we
7 will vacate and remand for new findings if the agency's
8 reasoning or its fact-finding process was sufficiently
9 flawed. Cao He Lin v. U.S. Dep't of Justice, 428 F.3d 391,
10 406 (2d Cir. 2005); Tian-Yong Chen v. U.S. INS, 359 F.3d
11 121, 129 (2d Cir. 2004).

12 We conclude that substantial evidence supports the
13 agency's adverse credibility finding. The IJ accurately
14 observed that Chen testified repeatedly on direct-
15 examination that he and his father were arrested and
16 detained in 2004, but stated in his written application - as

¹ Applications filed on or after May 11, 2005 are governed by the REAL ID Act of 2005. See REAL ID Act, Pub. L. No. 109-13, Div. B, §§ 101(a), (b), 119 Stat. 231, 302-03 (amending 8 U.S.C. § 1158). Chen contends that his right to due process was violated when the BIA applied the standard set forth in the REAL ID Act in reviewing his claim. The record reflects that Chen's asylum application was received by the immigration court well beyond the enactment of the REAL ID Act. Thus, the BIA appropriately found that review of Chen's claim was governed by the provisions of the REAL ID Act. See id.; see also Liang Chen v. U.S. Att'y Gen., 454 F.3d 103, 106-07 n.2 (2d Cir. 2006) (per curiam).

1 his father stated in his letter - that those events occurred
2 in 2005. The IJ reasonably rejected Chen's explanation that
3 he had forgotten the date of the events because they
4 happened "several years ago," given that those events
5 occurred only a year prior to his 2006 merits hearing. See
6 Majidi v. Gonzales, 430 F.3d 77, 80-81 (2d Cir. 2005)
7 (emphasizing that the agency need not credit an applicant's
8 explanations for inconsistent testimony unless those
9 explanations would compel a reasonable fact-finder to do
10 so). Thus, because this inconsistency involved the crux of
11 Chen's claim that he was persecuted in 2005 on account of
12 his practice of Falun Gong, it provided substantial evidence
13 supporting the agency's adverse credibility determination.
14 See Secaida-Rosales v. INS, 331 F.3d 297, 307 (2d Cir.
15 2003).

16 Similarly, the IJ correctly observed that Chen's
17 testimony that his father never stopped practicing Falun
18 Gong after his 1999 detention was inconsistent with his
19 written application and his father's letter which indicated
20 that he stopped practicing Falun Gong immediately after his
21 detention, resuming only in February 2004. We find no
22 support for Chen's assertion that the IJ misstated the

1 record on this matter. Thus, this inconsistency supports
2 the agency's adverse credibility determination. See 8
3 U.S.C. § 1158(b)(1)(B)(iii).

4 Moreover, in finding Chen's testimony not credible, the
5 IJ also reasonably relied on the absence of any other
6 evidence corroborating his claim that he was persecuted for
7 his practice of Falun Gong. Chen's failure to corroborate
8 his testimony in this manner bore on his credibility,
9 because his deficient corroboration rendered him unable to
10 rehabilitate testimony that had already been called into
11 question. See Zhou Yun Zhang v. INS, 386 F.3d 66, 78 (2d
12 Cir. 2004), overruled in part on other grounds by Shi Liang
13 Lin v. U.S. Dep't of Justice, 494 F.3d 296, 305 (2d Cir.
14 2007) (en banc). While Chen submitted a letter from his
15 father, the IJ appropriately declined to give that letter
16 weight when his father was not available for cross-
17 examination and had not attested to the letter's contents.
18 Xiao Ji Chen v. U.S. Dep't of Justice, 471 F.3d 315, 341 (2d
19 Cir. 2006).

20 Given that substantial evidence supports the agency's
21 adverse credibility determination, the agency permissibly
22 denied Chen's applications for asylum, withholding of

1 removal, and CAT relief to the extent they rested on the
2 same factual predicate. See Paul v. Gonzales, 444 F.3d 148,
3 156 (2d Cir. 2006); Xue Hong Yang v. U.S. Dep't of Justice,
4 426 F.3d 520, 523 (2d Cir. 2005).

5 Lastly, because Chen has failed to meaningfully raise
6 before this Court the agency's denial of his CAT claim based
7 on his illegal departure, we deem any such challenge waived.
8 See Yueqing Zhang v. Gonzales, 426 F.3d 540, 541 n.1, 545
9 n.7 (2d Cir. 2005).

10 For the foregoing reasons, the petition for review is
11 DENIED. As we have completed our review, Chen's pending
12 motion for a stay of removal in this petition is DISMISSED
13 as moot.

14 FOR THE COURT:
15 Catherine O'Hagan Wolfe, Clerk
16

17 By: _____
18